

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Lee Kirk,

Defendant.

ORDER

Criminal No. 19-213 ADM/HB

Lee Kirk, pro se.

This matter is before the undersigned United States District Judge for a ruling on Defendant Lee Kirk's ("Kirk") Motion for Reduction in Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A) [Docket No. 92]. Kirk requests compassionate release based on his health concerns amid the COVID-19 pandemic.

Kirk argues that the Federal Medical Center in Rochester, Minnesota ("FMC Rochester") where he is housed is currently experiencing a COVID-19 outbreak, and he is unable to protect himself from the virus through social distancing. He contends that contracting COVID-19 would be devastating to his health because he has underlying health conditions that include a heart attack in 2018, a stroke in 2019, diabetes, hypertension, and obesity. The Bureau of Prison's website shows that FMC Rochester currently has 62 prisoners and 18 staff members infected with COVID-19. See Federal Bureau of Prisons, COVID-19 Coronavirus, <https://www.bop.gov/coronavirus/> (last visited Mar. 3, 2022). Kirk asks the Court to consider his Motion on an emergency basis.

This is Kirk's second motion for compassionate release. His first motion [Docket No. 83] was denied on October 7, 2021 because he is fully vaccinated, and because his health

conditions and the pandemic were taken into account when he was sentenced in November 2020.

See Mem. Op. Order [Docket No. 91].

Although the number of COVID-19 cases has increased at FMC Rochester since the denial of Kirk's first motion, his vaccination continues to protect him from severe illness or death were he to contract COVID-19. The Centers for Disease Control and Prevention ("CDC") states that "[e]ven when fully vaccinated people develop symptoms, they tend to be less severe symptoms than in unvaccinated people," and that vaccinated individuals "are much less likely to be hospitalized or die than people who are not vaccinated." CDC, COVID-19, The Possibility of Breakthrough Infections after Vaccination, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html> (last visited Mar. 3, 2022). As a result, Kirk's health conditions amid the COVID-19 outbreak at his facility do not constitute extraordinary and compelling reasons warranting a sentence reduction. See United States v. Williams, No. CR 16-251 (DWF), 2021 WL 1087692, at *3 (D. Minn. Mar. 22, 2021) (denying compassionate release because "any risk that [defendant] will be reinfected with COVID-19 is largely mitigated by the fact that he has been fully vaccinated against the virus").

Accordingly, **IT IS HEREBY ORDERED** that Defendant Lee Kirk's Motion for Reduction in Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A) [Docket No. 92] is **DENIED**.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT COURT

Dated: March 3, 2022